*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.12824 of 2007

% 20-11-2007

Miss D.Anitha d/o.Sri Durga Prasad .. Petitioner

And

$ Secunderabad Cantonment Board,
Represented by its Chief Executive Officer,
Secunderabad and another .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Y.V. Ravi Prasad

^ Counsel for 2nd respondent : Sri Vedula Srinivas

? CASES REFERRED :

Nil

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12824 of 2007

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Between :

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THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12824 of 2007

ORDER:

1. This Court issued Notice before admission on 19-6-2007 and also made an order :

> *"Pending further orders, the 1st respondent is directed not to interfere with the possession of the petitioner in respect of the premises in question in any manner whatsoever nor demolish the structures standing thereon without following the due process of law".*

On 3-7-2007 *rule nisi* was issued and pending further orders, the interim order granted earlier was directed to be continued.

2. Respondents filed counter affidavits.

3. 2nd respondent filed W.V.M.P.No.1548/2007 to vacate the interim order. Though the matter is appearing under the caption "INTERLOCUTORY", while arguing the vacate application, the Counsel on record made a request for disposal of the Writ Petition itself and in view of the same, the Writ Petition is being disposed of finally.

4. Miss D.Anitha, the petitioner, filed the present Writ Petition for a Writ of Mandamus or any other appropriate writ, order or direction declaring the action of the 1st respondent in trying to demolish the petitioner's existing premises bearing No.1-37-20, Balamrai, Rasoolpura Village, Secunderabad without notice as illegal, arbitrary and without jurisdiction and contrary to the provisions of Cantonments Act 2006 and to pass such other suitable orders.

5. Sri C.Raghu, the learned Counsel representing the petitioner would maintain that this is a case of a building which had been already constructed and not a case where construction activity of the building is proceeded with. The Counsel also would submit that the stand taken that person attempts were made to serve notice on Vijaya Lakshmi who is none other than the sister of the petitioner and since the building in question was

locked, the same had been pasted, these are untenable contentions. The learned Counsel also would submit that the fact that the petitioner has been in possession of the premises in question being not in serious controversy as evidenced even by the electricity bills, it would be just and proper to put the petitioner on notice calling for explanation and then further proceed with in accordance with Law if the 1st respondent is satisfied that such structures cannot be permitted to be continued in the light of the provisions of the Cantonments Act 2006 (Act 41/2006) in short referred to as “Act” for the purpose of convenience.

6. On the contrary, Sri Y.V.Ravi Prasad, the learned Standing Counsel representing the 1st respondent had taken this Court through the contents of the counter affidavit and would maintain that the writ petitioner is taking a false stand and evidently with a view to postpone the proposed demolition activity and only with a view to come to the aid of the said Vijaya Lakshmi this episode had been thought of and the writ petitioner in fact has nothing to do with the property and no acceptable material also had been placed before this Court to show that the petitioner has been in possession of the property and the recent electricity bill relied upon also would amply

establish that the petitioner is trying to procrastinate the litigation on some ground or other. The Counsel also pointed out to the historical background of the litigation in the prior Writ Petitions.

7. Sri Vedula Srinivas, the learned Counsel representing the 2nd respondent/vacate petitioner in W.V.M.P.No.1548/2007 had taken this Court through the contents of the counter affidavit filed by the 2nd respondent and also had drawn the attention of this Court to Sections 247 and 248 of the Act and the series of events and would maintain that these events would clearly go to show how the said Vijaya Lakshmi having set up the present petitioner is trying to delay the proceedings on some ground or the other. If the stand taken by the petitioner to be permitted, then the litigation may be endless and Vijaya Lakshmi may be setting up such parties with a view to prevent the 1st respondent from proceeding with the further statutory duties or obligations to be carried out by the 1st respondent under the provisions of the Act.

8. Heard the Counsel.

9. The petitioner, Miss D.Anitha, is questioning the action of the 1st respondent in attempting to demolish the structures bearing No.1-37-20, Balamrai, Rasoolpura

village, Secunderabad without any notice being arbitrary and without jurisdiction under the provisions of the Act aforesaid. The specific stand taken by the petitioner is that she is the owner and possessor of the said premises constructed over an extent of 55 sq. yards approximately and the building has been in existence since more than 15 years and she was running a Kindergarten School in the said premises and she had leased out the said premises now to M/s.Sai Enterprises which is using the same for its business purpose. Further it is stated that the said premises would fall within the area of Cantonment and the 1st respondent has got control over the entire Cantonment area. It is further stated that on 18-6-2007, some of the employees of the 1st respondent came to the property and made an attempt to demolish the structures and with great difficulty, the writ petitioner was able to resist. On enquiry, the petitioner came to know that the 2nd respondent made a representation dated 6-7-2006 and also another representation dated 11-7-2006 to the 1st respondent alleging that one Vijaya Lakshmi who is none other than her sister had sold the property to him being one of the vendors in a registered sale deed executed in his favour in the year 1998 and the said Vijaya Lakshmi in spite of selling the property has been in

illegal possession of the property and trying to make illegal constructions. The 2nd respondent herein filed W.P.No.15410/2006 making the said Vijaya Lakshmi as 2nd respondent praying for appropriate directions and this Court by order dated 27-7-2006 had disposed of the Writ Petition at the stage of admission directing the 1st respondent to consider the representations made by the 2nd respondent and pass appropriate orders in accordance with Law after affording due opportunity to the 2nd respondent i.e., Vijaya Lakshmi, to rebut the allegations. Further, it is stated that the 1st respondent, though the order was passed in the month of July 2006, had never taken any action till 18-6-2007 and surprisingly on the said date they tried to demolish the house of the petitioner and when enquired she was told that in pursuance of the order of this Court in W.P.No.15410/2006 they are demolishing the structures. Specific stand had been taken that Vijaya Lakshmi, though the sister of the petitioner, never resided in the premises and has been residing elsewhere, that too to the knowledge of the 2nd respondent and since the petitioner refused to sell the property and the said Vijaya Lakshmi though the stand of the 2nd respondent to be accepted,

being totally unconcerned with the property, it cannot be said that she has any right whatsoever to enter into any transaction. It is also stated that the petitioner has been in possession of the property and the name also had been mutated by the 1st respondent and the petitioner has been paying taxes to the 1st respondent in her own name and she got electricity connection which stands in her name. The writ petitioner also relied upon one of the receipts passed by the 1st respondent dated 1-9-2006 which was passed after the order dated 27-7-2006. It is also stated that the 1st respondent is aware of the possession of the petitioner and the taxes also were paid upto March 2007 and the electricity bills also stand in the name of the petitioner. Thus, all these aspects would go to show that the petitioner is in possession of the property. Further it is stated that the lessee of the petitioner M/s.Sai Enterprises also had filed a civil suit O.S.No.1128/2002 against third parties when they were interfering with their possession on the instigation of the 2nd respondent and obtained a permanent injunction and the said suit was decreed on 4-7-2003. Further it is stated that on a perusal of the provisions of the Act, the said provisions would go to show that the 1st respondent does not have any power or authority or jurisdiction to demolish the already

constructed buildings. Several further facts also had been narrated. Further it is stated that the 2nd respondent claims to be in possession of the property in Sy.No.75/2, Rasoolpura village and in fact there is no such survey number existing in Rasoolpura village. The Deputy Survey and Land Records vide proceedings L.Dis.F1/TS/566/2001 dated 31-12-2001 stated that Rasoolpura village has only 74 survey numbers and does not have Sy.No.75/2 and therefore the contention of the 2nd respondent that he owns property in Sy.No.75/2 itself is a false claim. Further, even in W.P.No.15410/2006 the 2nd respondent had misled this Court alleging that the 2nd respondent therein i.e., Vijaya Lakshmi was making illegal construction in Plot No.18, Avanthi Cooperative Housing Society. The 2nd respondent himself also filed a Writ Petition against G.V.Krishna Reddy stating that he is the owner of Plot No.18, Avanthi Cooperative Housing Society and it was contended in the said Writ Petition that in the process of making construction the said G.V.Krishna Reddy was encroaching into 200 sq. yards of land of the 2nd respondent in Sy.No.75/2, Rasoolpura village and thus the 2nd respondent himself is making a distinction between Plot No.18, Avanthi Cooperative

Housing Society and his property in the alleged Sy.No.75/2. Though taking such a stance in the earlier Writ Petition, in W.P.No.15410/2006 quite a contradictory stand had been taken stating that the 2nd respondent therein i.e., Vijaya Lakshmi, is in possession of Plot No.18 which falls in Sy.No.75/2. It is further stated that when a false complaint was made against G.V.Krishna Reddy, the Mandal Revenue Officer had addressed a letter No.P/921/2006, dated 31-3-2006 to the S.H.O., Begumpet stating that the said G.V.Krishna Reddy had purchased the land in Sy.Nos.29, 30, 31 and 32 of Rasoolpura village, Avanthi Cooperative Housing Society and that Sy.No.75/2 as claimed by the 2nd respondent is not existing in the village map of Rasoolpura village. It is further stated that the action of the 1st respondent in attempting to demolish the premises of the petitioner bearing No.1-37-20, Balamrai, Rasoolpura village, Secunderabad is illegal, arbitrary and without jurisdiction. Further, Section 248 of the Act contemplates power to the 1st respondent to stop erection or re-erection or to demolish, but the said power can be exercised only within 12 months of the completion of erection and the whole Section does not refer to demolition of the already existing buildings. Thus, specific stand is taken that the proposed

demolition activity of the subject matter of the Writ Petition without putting the petitioner on notice is illegal and without jurisdiction.

10. The 1st respondent filed counter affidavit wherein specific stand had been taken that the contention of the petitioner that she is the owner and possessor on premises in question are untrue. The contents of para-7 had been denied for want of knowledge. Further, the contention of the writ petitioner in para-8 that the 1st respondent does not have any power, authority or jurisdiction to demolish the already constructed buildings and that the petitioner is not undertaking any construction etc., had been specifically denied. It is stated that the premises alleged to have been owned by the petitioner is actually in possession of Vijaya Lakshmi. The said construction was made without obtaining any permission from the 1st respondent in open plot. The 2nd respondent filed W.P.No.15410/2006 before this Court praying for action against unauthorized construction and the said Writ Petition was filed against Vijaya Lakshmi who is in possession of the property. Further, it is stated that in obedience of the orders passed by this Court in the said Writ Petition, the 1st respondent herein had issued a notice dated 20-11-2006 vide letter

No.SCB/EB/Sy.No.75/Balamrai/61 to the said Vijaya Lakshmi as well as the 2nd respondent directing them to appear to explain their case and a copy of the said notice was also pasted on the door of the premises. The said Vijaya Lakshmi failed to appear nor did she file any explanation and therefore the 1st respondent was constrained to issue notice under Section 248 of the Act vide No.EB/OP/Sy.No.75/Balamrai/611 dated 23-2-2007 and the said notice was sent by registered post with acknowledgement due. However the said notice was returned unserved and therefore the 1st respondent was constrained to affix the notice dated 23-2-2007 to the door of the said house in Sy.No.75/2. In the said notice, Vijaya Lakshmi was directed to remove the unauthorized constructions within 30 days from the date of receipt of the notice. However, the said Vijaya Lakshmi neither complied with the notice nor preferred any appeal before the Appellate Authority as provided under Section 340 of the Act. Thereafter, the 1st respondent had issued a notice dated 9-4-2007 under Section 320 of the Act vide letter No.SCB/EB/OP/Sy.No.75/2/Balamrai/1506/1179 to the said Vijaya Lakshmi and in the said notice it was mentioned that as the said Vijaya Lakshmi failed to comply with the earlier notice issued under Section 248 of

the Act, the 1st respondent would execute the removal of the unauthorized construction if she fails to remove the said within 15 days from the date of receipt of the notice. The said notice was also pasted on the door of the premises aforesaid, but the said Vijaya Lakshmi failed to comply with the said notice also. Further, it is averred in para-6 that as a matter of fact the said Vijaya Lakshmi is in possession of the property and she failed to comply with the notices issued by the 1st respondent. Further, an alternative remedy of Appeal is provided under Section 340 of the Act against the notice issued under Section 248 of the Act. Having failed to avail the same, the petitioner is precluded from filing the present Writ Petition against the action initiated in pursuance of the earlier notices. The present Writ Petition is devoid of merits and is not maintainable either under law or under factual counts. The present Writ Petition had been filed only to prevent and delay the action against the unauthorised construction.

11. In W.V.M.P.No.1548/2007, several averments had been specifically denied and further several material papers also had been relied upon relating to all the prior proceedings. In para-2 it is stated that the writ petitioner has no title and she is in no way concerned with the

premises bearing No.1-37-20, Balamrai, Rasoolpura, Secunderabad and she had been set up by her sister Vijaya Lakshmi against whom the 2nd respondent obtained orders in W.P.No.15410/2006 in which this Court directed the 1st respondent to act in accordance with Law against the illegal constructions raised by her on Plot No.75/2, Balamrai, Rasoolpura. Several facts leading to the filing of the said Writ Petition had been narrated as hereunder. It is stated that the 2nd respondent with three others had purchased an extent of 3130 sq. yards of land situate in Sy.No.75/2 of Rasoolpura village, Secunderabad under a registered sale deed bearing No.2451/2001 dated 18-5-1998 and the vendors under the said registered sale deed purchased the said property on 14-8-1957 vide document No.1997/1957 and they had been in possession of the property till the 2nd respondent and others purchased it. When the 2nd respondent applied for a layout in respect of the land to the 1st respondent in the year 2003, the 1st respondent kept it pending on an untenable ground that the 2nd respondent should obtain no objection certificate from the local Mandal Revenue Officer. Recently, the 2nd respondent questioned the said action of the 1st respondent in

W.P.No.11091/2006 and the same was allowed with costs on 19-6-2006 by this Court and the 1st respondent was directed to dispose of the application of the 2nd respondent for layout without insisting for no objection certificate of the Mandal Revenue Officer. Further, Smt. Vijaya Lakshmi was an encroacher of a small piece of land admeasuring about 55 sq. yards which is a part and parcel of Sy.No.75/2 and she was also added as an executant in the sale deed though she does not have any rights over any part of the property. She had reconstructed a single roomed structure on the illegally occupied land and had been using it for running an elementary school and her possession of the land as well as the structure re-raised by her are totally illegal and without any authority. She did not obtain any permission from the 1st respondent before making the re-construction. The 2nd respondent filed suit O.S.No.431/2001 in City Civil Court, Secunderabad for eviction of Vijaya Lakshmi from his land. Vijaya Lakshmi filed a written statement in the said suit stating that the property in Sy.No.75/2 originally belonged to late Nawab Salarjung Bahadur and later on it stood transferred in favour of Jafar Ali in 1954 and thereafter to one Narayan Reddy. Except saying so, she did not claim her title over

the property nor had asserted any rights over the said property. Impliedly, Vijaya Lakshmi is an encroacher over the property. She did not even claim that the illegal construction standing over 55 sq. yards of land in Sy.No.75/2 had been raised by her and that she is entitled to do so. In the light of the contents of the said written statement, the structure standing on 55 sq. yards of land in Sy.No.75/2 is an unauthorised and illegal construction and the same is liable to be demolished by the 1st respondent in accordance with the provisions of the Act. Further it is stated that as per Section 247 of the Act, a person is punishable for making illegal construction of a building under Section 248 of the Act. The 1st respondent is bound to issue notice to a person who had illegally constructed or re-constructed a building or being in occupation thereof calling upon him to cause demolition of the building for having committed an offence under Section 247 of the Act. The 1st respondent is a statutory authority and it is bound to act in accordance with Law to prevent illegal constructions or re-constructions being made within its jurisdictional area in the interest petition provisions of the Act. Since the 1st respondent is not taking any steps for causing demolition of the illegal re-construction which the 2nd respondent is occupying, the

2nd respondent was constrained to approach this Court by way of W.P.No.15410/2006. Further it is averred that the 2nd respondent had already represented to the 1st respondent on 7-6-2006 and 11-7-2006 requesting him to initiate action for causing demolition of the structure which is in occupation of Vijaya Lakshmi over an extent of 55 sq. yards of land in Sy.No.75/2 of Rasoolpura village. It appears that in continuation of a routine inspection during the year 2005, the authorities of the 1st defendant came across the illegal re-construction made by Vijaya Lakshmi and issued a notice to her and it appears that she gave a reply stating that she is not responsible for the structure and she is a mere occupant of the same. Thereafter the 1st respondent did not proceed further and did not initiate the proceedings under Section 248 of the Act. Even after receiving the representation of the 2nd respondent also the 1st respondent is not taking any steps for causing demolition of the illegal structure. It is further stated that in respect of another illegal construction made by way of encroachment by another person on the land of the 2nd respondent situate in Sy.No.75/2 also, the 1st respondent did not initiate any action despite his representations and the 2nd respondent was constrained to approach this

Court by way of W.P.No.13495/2006 and this Court was pleased to dispose of the same on 7-7-2006 directing the 1st respondent to initiate action in accordance with Law against the encroacher therein. Further, it is stated in para-3 of the counter affidavit filed by the 2nd respondent that on the basis of the aforementioned pleadings, this Court disposed of W.P.No.15410/2005 on 27-7-2006 directing the 1st respondent to consider the representations of the 2nd respondent dated 6-7-2006 and 11-7-2006 and to proceed in accordance with Law after affording due opportunity to Smt. Vijaya Lakshmi within a period of three months from the date of receipt of the order. Thereafter the 1st respondent had issued a notice dated 20-11-2006 to Smt. Vijaya Lakshmi asking her to show cause against the action proposed against the unauthorised construction made by her in Sy.No.75/2, Balamrai, Rasoolopura and followed by two other notices dated 17-2-2007 and 9-4-2007 issued by the 1st respondent covering the same subject matter. Since there was nobody in possession of the said illegal construction to receive the said notices sent under Registered Post, the 1st respondent got those notices pasted on the said premises and the same had been

recorded by it. It is further stated that the 2nd respondent also was served with two of those notices and the 2nd respondent submitted his willingness for the demolition of the illegal structure through his letters dated 22-3-2007 and 4-5-2007. Thereafter the 1st respondent had proceeded on 18-6-2007 for demolition of the illegal structure by taking necessary labour and police force. At the site, the authorities of the 1st respondent found nobody in possession of the illegal structure but it was locked. They had also called their Standing Counsel to the site and in his presence prepared a Panchanama and thereafter proceeded to break the lock. Under the said Panchanama, the articles found inside the premises were removed and the demolition work was about to be commenced. At that moment, Smt. Vijaya Lakshmi came to the site with her Counsel and also with some anti-social elements and tried to resist the demolition work in a highhanded manner and due to the obstruction caused by them, the authorities of the 1st respondent had returned without causing the demolition of the structure. It is further averred in para-4 of the counter affidavit that the petitioner was not at all present on 18-6-2007 at the site nor she resisted the demolition action. All the averments made in the writ affidavit about her possession of the disputed

premises and her entitlement to continue in the same are false and concocted. The fact that she omitted to mention about her alleged source of ownership of the premises No.1-37-20, Balamrai, Rasoolpura itself would show the fallacy in her contention about her title. Further, it is incorrect to say that the petitioner was running a Kindergarten School therein and later on she leased the premises to M/s. Sai Enterprises for business. Neither the petitioner was in possession of the premises nor any firm by name M/s. Sai Enterprises ever resided therein. The averments made in para-5 of the writ affidavit are totally false. Evidently, the petitioner had been set up by Smt. Vijaya Lakshmi with an intention to restart the whole litigation in order to frustrate the 2nd respondent's plan to develop the property and to gain undue advantage out of the same. The averments in para-6 are also incorrect. The petitioner is put to strict proof of the alleged mutation of her name and also about payment of the taxes. The mere payment of property tax will not confer any right or title or possession in the petitioner in the absence of any other clinching evidence. The leasing of the premises to M/s. Sai Enterprises and their filing of the suit against some third parties are all fabricated and have no legal value since the petitioner herself has no right over the

property. The fact that M/s. Sai Enterprises did not raise any protest on 18-6-2007 nor filed any case against the 1st respondent itself shows that such a firm is a fictitious body and it is only a creation of the petitioner. While replying to the averments made in para-9 of the affidavit filed in support of the Writ Petition, it was stated that as regards the existence of Sy.No.75/2 or otherwise are incorrect and the said issue itself is irrelevant for the purpose of the nature of grievance made in the Writ Petition more particularly in view of the fact that the petitioner has no connection and no legal right over the property in Sy.No.75/2. It is reiterated that the 2nd respondent along with three others had purchased the property in Sy.No.75/2, Rasoolpura village under a registered sale deed bearing No.2451/2001 dated 18-5-1998 from the earlier owners R.Umashankar and others and the said R.Umashankar and others purchased the land from the original owner Gopi Shetti Shankaraiah. Before the 2nd respondent purchased the property, he had obtained Encumbrance Certificate from the office of the Sub-Registrar for the period 1957 onwards and the land had been described as Sy.No.75/2, Rasoolpura village. Even the letter addressed by the Mandal Revenue Officer, Secunderabad to the Begumpet Police

Station dated 18-11-2002 also states that the land in Sy.No.75/2 of Rasoolpura village is a patta land belonging to Gopi Shetti Shankaraiah. Similar letter had been addressed to the father of the 2nd respondent also by the Mandal Revenue Officer basing on the revenue records. The 2nd respondent had applied for a layout in respect of the land in Sy.No.75/2 and also filed W.P.No.11091/2006 in this Court complaining against the inaction of the Secunderabad Cantonment Board in sanctioning the layout. This Court passed orders in the said Writ Petition and a counter affidavit had been filed by the Secunderabad Cantonment Board directing the Cantonment Board to consider and pass orders on the application of the 2nd respondent. In pursuance thereof, the Cantonment Board had already considered the application of the 2nd respondent and approved the layout and it was done only after referring the matter of existence of Sy.No.75/2 of Rasoolpura village to the Defence Estate Officer, Secunderabad and on the basis of the records of the Government of India. The aforementioned facts would clearly establish that the Rasoolpura village has got Sy.No.75/2 and the 2nd respondent's land is situate therein and is correlated to G.L.R. Sy.No.764/Part situate at Balamrai, Secunderabad Cantonment. Hence, the

contention of the petitioner that there is no Sy.No.75/2 in that village is incorrect, untenable and frivolous. Further, it is stated that G.V.Krishna Reddy is the owner of Plot No.18 of Avanthi Colony and he encroached upon 48 sq. yards of the land of the 2nd respondent in Sy.No.75/2 of Balamrai and hence the 2nd respondent sought for the demolition of illegal construction in the Writ Petition filed by him against G.V.Krishna Reddy and Smt. Vijaya Lakshmi. Further, it is stated that in so far as Smt. Vijaya Lakshmi is concerned, she had illegality re-erected a structure in Sy.No.75/2 of Balamrai and the 2nd respondent sought for demolition of the said structure also in the Writ Petition filed against her and hence there is no inconsistency or contradictory stand taken by the 2nd respondent. Further, specific stand has been taken in para-8 that neither the petitioner nor M/s. Sai Enterprises are in possession of the illegal structure at any point of time, much less on 18-6-2007 and the Writ Petition itself is a frivolous and mischievous one. The action of the 1st respondent dated 18-6-2007 is neither contrary to law nor illegal. The petitioner is making false claim about her ownership and possession of the extent of 55 sq. yards in Sy.No.75/2, Balamrai, Rasoolpura only to harass the 2nd

respondent at the instance of her sister Vijaya Lakshmi who could not continue her illegal possession in view of the suit filed by the 2nd respondent and also the directions given by this Court in the earlier Writ Petition and specific stand had been taken that if the litigation is prolonged, the 2nd respondent would be put to serious loss.

12. The Act, Act 41 of 2006, is an Act to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratization, improvement of their financial base to make provisions for developmental activities and for matters connected therewith or incidental thereto. Section 247 of the Act deals with **Illegal erection and re-erection** and the said provision reads as hereunder :

> "Whoever begins, continues or completes the erection or re-erection of a building –
>
> (a) without having given a valid notice as required by Section 235 and 236, or before the building has been sanctioned or is deemed to have been sanctioned, or
>
> (b) without complying with any direction made under sub-section (1) of Section 238, or
>
> (c) when sanction has been refused, or has ceased to be available or has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of Section 58,
>
> shall be punishable with fine which may extend to

fifty thousand rupees and the cost of sealing the illegal construction and its demolition.

Section 248 of the Act deals with **Power to stop erection or re-erection or to demolish** and the said provision reads as hereunder :

(1) The Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the Cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under Section 247 and may, in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence under Section 247, within twelve months of the completion of such erection or re-erection in like manner, direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected:

Provided that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable:

Provided further that the Board shall not, without the previous concurrence of the General Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the Cantonment to stop the erection or re-erection of a

building in any case in which the order under Section 238 sanctioning the erection or re-erection has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of Section 58, and shall in any such case in like manner direct the demolition or alteration as the case may be, of the building or any part thereof so erected or re-erected where the General Officer Commanding-in-Chief, the Command, thereafter directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him:

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the General Officer Commanding-in-Chief, the Command, has been communicated to him.

13. The words "*The Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the Cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under Section 247…"* and further, the words "…*or in any other case in which the Board considers that the erection or re-erection of a building is an offence under Section*

247 within 12 months of the completion of such erection or re-erection in the like manner...." also in the said sub-section would assume some importance. The applicability of Section 248 of the Act and whether in the facts and circumstances of the case, inasmuch as the construction is said to have been done long ago, whether this provision can be invoked at all in the light of the language of Section 247 and Section 248 of the Act, had been argued in elaboration.

14. Section 340 of the Act deals with **Appeals from executive orders** and the said provision reads as hereunder :

(1) Any person aggrieved by any order described in the third column of Schedule V may appeal to the appellate authority specified in that behalf in the fourth column of the said Schedule.

(2) The Central Government may, for the purposes of expeditious disposal of the pending appeals, by notification in the Official Gazette, amend Schedule V so as to designate additional Appellate Authority in the fourth column of the said Schedule.

(3) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fifth column of the said Schedule.

(4) The period specified as aforesaid shall be computed in accordance with the provisions of the Limitation Act, 1963 (36 of 1963), with respect to the computation of periods of limitation thereunder.

15. In the light of several factual controversies and also the specific stand taken that it is out of the knowledge of the 1st respondent that the petitioner has been in possession of this property and despite the same, in the light of the directions made by this Court, the 1st respondent while considering the representations had taken a decision to further proceed with the demolition activity and also in the light of the specific stand that in fact several attempts had been made to serve notice on Vijaya Lakshmi and for reasons best known it appears the said Vijaya Lakshmi had avoided the receipt of notice and the same had been pasted at the premises and also in the light of the specific stand taken by the 1st respondent, this Court is of the considered opinion that these factual issues may be effectively gone into in an Appeal. Further, prima facie, no doubt, on the respective stands taken by the parties, the petitioner is unable to substantiate her title to the property and no acceptable material had been placed before this Court in this regard. Hence, in the light of the respective stands taken by the parties, let the writ petitioner invoke the Appeal remedy in accordance with Law and to enable the writ petitioner to invoke such Appeal remedy and to obtain such appropriate orders, the interim order granted by this Court to be operative for a

period of two weeks.

16. Accordingly, with the above directions, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

Date :

L.R. copy to be marked : YES / NO
AM